UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/32
6 March 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967

GE.02-11269 (E) 110302

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Executive summary

The Special Rapporteur's interpretation of his mandate, as being to investigate violations of international humanitarian law and human rights in the context of military occupation, has been challenged by the Government of Israel in document E/CN.4/2002/129. The Special Rapporteur requests the Commission to give a ruling on this matter.

There are different perceptions of the cause of the violence in the Palestinian Territory. Palestinians see the military occupation of their territory as the principal cause of the present crisis. Israelis, on the other hand, see terrorism as the cause of the crisis. Terrorism is a scourge that threatens Israelis and Palestinians alike and every effort should be made to bring terrorism to an end, whether it is perpetrated by instruments of the State, by organized non-State groups or by individuals. At the same time, it is important to stress that the main explanation for the acts of terrorism committed by Palestinians against Israelis is the military occupation. It is this occupation that is responsible for most of the violations of humanitarian law and human rights in the region.

Since the start of the second intifada, in September 2000, nearly 1,000 Palestinians have been killed and about 17,300 injured. More than 260 Israelis have been killed and about 2,400 injured. Most of those killed and injured have been civilians, many of them children. Violence is escalating rapidly in the region as both parties to the conflict employ more dangerous weaponry and show more determination in causing harm to life and property. In this situation, initiatives for a ceasefire or a cessation of violence as a precondition for the resumption of talks between Israelis and Palestinians seem doomed to fail. Only an effective international presence in the region with the power to monitor and reduce the use of violence can achieve this goal. The Special Rapporteur therefore believes that there is a need for an international peacekeeping mission, structured and composed to meet the circumstances of the region.

Settlements are an ever-visible and aggravating sign of occupation and of Israel's illegal conduct as an Occupying Power. Although Israel has undertaken not to establish new settlements, the existing settlements are expanding both in terms of land and settlers.

The demolition of houses in the Palestinian Territory continues unabated. In the Gaza Strip alone, over 400 houses have been completely destroyed and 200 seriously damaged, leaving over 5,000 persons homeless. Moreover, the creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers.

Israel's restrictions on freedom of movement, resulting from checkpoints, have caused great personal, social and economic hardships to civilians in no way involved in the conflict. They constitute collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

Children have suffered greatly in the present crisis. Every effort should be made by the Israeli military authorities to ensure that the safety and welfare of schools and schoolchildren are respected. It is further recommended that an investigation be conducted into allegations of inhuman treatment of children under the military justice system and that immediate steps be taken to remedy this situation.

I. INTRODUCTION

1. The current Special Rapporteur, John Dugard (South Africa), was appointed in July 2001. In August 2001 and in February 2002 the Special Rapporteur undertook missions to the Occupied Palestinian Territory and Israel. Meetings were held with Palestinian and Israeli non-governmental organizations, Palestinian and Israeli interlocutors, international agencies in the region and members of the Palestinian Authority, including the President of the Palestinian Authority, Yasser Arafat. Unfortunately, the Special Rapporteur was not able to meet with Israeli authorities as the Government of Israel made it clear at the outset when he was appointed that it would not cooperate because of objections it has to the terms of his mandate. (This matter is discussed below.) On these missions, the Special Rapporteur met with interlocutors in the Gaza Strip, Jerusalem and the West Bank. In August 2001 the Special Rapporteur visited Rafah, Beit Jala and Shu'afat to see the destruction caused to houses and property, and Jericho to examine the manner in which the city had been closed by means of trenches cutting off access roads. In February 2002, he again visited Rafah to see the house demolitions carried out by the Israel Defense Forces (IDF) in January 2002.

2. In February 2002 the Special Rapporteur made a special study of the impact of the present crisis on children. Meetings were accordingly held with education officials of the Ministry of Education of the Palestinian Authority, school principals and teachers, university authorities and non-governmental organizations concerned with the treatment of child prisoners. The Special Rapporteur visited the University of Bir Zeit and the Al-Khader school in the district of Bethlehem and interviewed juveniles who testified about ill-treatment they had been subjected to when they had been arrested and detained by the Israeli authorities.

3. While the Special Rapporteur was in Gaza on 10 and 11 February 2002, Gaza City was subjected to heavy bombing, which caused extensive damage to offices of the United Nations Special Coordinator (UNSCO) in Gaza. The Special Rapporteur was thus able to experience at first hand the military assaults to which the Palestinian people are regularly subjected.

4. In February 2001, the Special Rapporteur visited the area as the chairperson of the Human Rights Inquiry Commission established pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000. The report of this Commission is contained in document E/CN.4/2001/121.

5. The present report is based on the visits made to the area in August 2001 and February 2002, consultation and discussion with persons in and outside the area, the study of materials on the situation in the Occupied Palestinian Territory and wide media coverage.

6. In October 2001 the Special Rapporteur submitted a report, based on his visit to the region in August 2001, to the Third Committee of the General Assembly. The report, contained in document A/56/440, was duly considered by the Third Committee in November 2001. On 7 December 2001 the Government of Israel submitted a response to this report: see document E/CN.4/2002/129. The criticisms contained in this response and the Special Rapporteur's reply to these criticisms are dealt with in the present report.

II. THE MANDATE OF THE SPECIAL RAPPORTEUR

7. The mandate of the Special Rapporteur is to be found in two resolutions of the Commission on Human Rights. In resolution 1993/2, section A, the Commission decided to appoint a special rapporteur with the following mandate:

(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.

In resolution 2001/7, the Commission welcomed the recommendations contained in the reports of the High Commissioner for Human Rights (E/CN.4/2001/114) and the Human Rights Inquiry Commission (E/CN.4/2001/121), urged the Government of Israel to implement them and requested the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations and to submit reports thereon to the General Assembly at its fifty-sixth session and the Commission at its fifty-eighth session.

8. In his report of October 2001 (A/56/440), the Special Rapporteur stated that his mandate required him to investigate human rights violations in the Occupied Palestinian Territory within the context of military occupation. In support of this interpretation of the mandate, he reasoned as follows:

> "Resolution 1993/2, section A makes it clear that the Special Rapporteur is required to investigate violations of international humanitarian law committed by the occupying authority - *Israel* - until the end of the Israeli occupation of the Occupied Palestinian Territories. There is a close connection between international humanitarian law and human rights - a connection reaffirmed by the General Assembly in its resolution 2675 (XXV). It is therefore impossible to examine violations of international humanitarian law or general international law without reference to human rights norms, particularly in a situation of prolonged occupation of the kind that continues to prevail in the Occupied Palestinian Territories. The mandate therefore includes the investigation of human rights violations committed by Israel in the Occupied Palestinian Territories, but only in the context of military occupation. It is the prolonged military occupation of the Occupied Palestinian Territories which makes the mandate of the Special Rapporteur unusual and which distinguishes it from other special rapporteurships established by the Commission on Human Rights"(para. 5).

9. The Government of Israel has raised a number of objections to this reasoning, which it claims has resulted in an unprecedented expansive interpretation of the mandate. These objections and the responses thereto appear below:

(a) *Objection*: it is inaccurate to describe the situation in the Palestinian Territory as one of *military* occupation on the ground that since the implementation of the Oslo Accords (A/51/889-S/1997/357, annex) and related agreements the control of the lives of over 98 per cent of the Palestinians has passed to the Palestinian Authority, which now has full control over the so-called A areas which include most Palestinian cities and towns.

Response: While it is true that many powers have been transferred by Israel to the Palestinian Authority - including the important area of the administration of justice, in which most violations of human rights occur - the reality is that Israel not only has the power to intervene in the occupied territories, including those designated as A areas, on grounds of security, but that it has *in fact* done so in recent months. The denial that Israel is in military occupation of the territories is impossible to reconcile with recent military incursions into Ramallah, Bethlehem, Gaza, Beit Jala, Beit Rima and Tulkarem, the presence of Israeli tanks outside President Arafat's headquarters in Ramallah and over 150 military checkpoints in the occupied territories that have seriously disrupted the lives of Palestinians living in the A areas. Moreover, it takes no account of article 47 of the Fourth Geneva Convention, which provides that protected persons in an occupied territory shall not be deprived "in any case or in any manner whatsoever" of the benefits of the Convention by any change to the government of the territory resulting from an agreement concluded between the authorities of the occupied territories and the Occupying Power.

(b) *Objection*: International humanitarian law and human rights law are "subject to separate international regimes". The close connection between the two "does not imply that the area of humanitarian law cannot be investigated without extending the mandate of the Special Rapporteur to cover human rights law".

Response: The purpose of the principal international instrument concerned with the protection of civilians under military occupation, the Fourth Geneva Convention of 1949, is to ensure respect for the human rights of protected persons. This is made clear by article 27 of the Convention, which provides that the Occupying Power is to respect the fundamental rights of protected persons. According to the Commentary of the International Committee of the Red Cross on this provision: "The right to respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity - an essential attribute of the human person" (p. 201). The "rights of the individual" have been proclaimed, described and interpreted in international human rights instruments, particularly the international covenants on civil and political rights, and economic, social and cultural rights of 1966, and in the jurisprudence of their monitoring bodies. These human rights instruments therefore complement the Fourth Geneva Convention by defining and giving content to the rights

protected in article 27. This is borne out by repeated resolutions of the General Assembly (for example, resolution 2675 (XXV)) and by the Vienna Declaration adopted by the World Conference on Human Rights in 1993, which declared that:

> "Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law."

(c) *Objection*: In the case of a prolonged occupation, such as that of the Palestinian territories, the law of occupation envisages that "the Occupying Power will not become more bound, but less bound by the legal regime". In support of this contention, the Government of Israel cites the commentary of the International Committee of the Red Cross on article 6 of the Fourth Geneva Convention to the effect that if the occupation continues for a prolonged period after the general cessation of hostilities, "a time would doubtless come when the application of the Convention was no longer justified, especially if most of the governmental and administrative duties carried out at one time by the Occupying Power had been handed over to the authorities of the occupied territory"(p. 62).

Response: Unfortunately the time has not come in the Occupied Palestinian Territory when the application of the Convention is no longer or less justified. The transfer of governmental and administrative powers to the Palestinian Authority in A areas has not diminished the need for the protection of the people of the territories from the Occupying Power for the reasons set out in the present report. This was made clear in the Declaration adopted on 5 December 2001 by the High Contracting Parties to the Fourth Geneva Convention, which reaffirms the applicability of the Convention to the Occupied Palestinian Territory and reiterates "the need for the full respect for the provision of the said Convention in that Territory" (para. 3).

10. The Government of Israel has raised a number of serious objections to the Special Rapporteur's interpretation of his mandate which call for attention. The Special Rapporteur requests that the Commission consider this matter at its session in 2002 and issue a directive on the subject so that the scope of the present mandate is not in dispute.

III. OCCUPATION AND TERRORISM

11. There are different perceptions of the cause of the violence in the region. Palestinians see the military occupation of their territory as the principal cause of the present crisis. Every Palestinian is today personally and directly affected by the occupation: freedom of movement is seriously impeded by Israeli military roadblocks (checkpoints) that have transformed short journeys into major excursions; the standard of living has been drastically lowered by the closure/blockade of cities and towns and the livelihood of many is threatened; education has been seriously disrupted and health care undermined; homes have been demolished and agricultural land "swept" by bulldozers; militants (and innocent bystanders) are killed by rockets

from the skies; tanks parade through cities under the administrative control of the Palestinian Authority; fighter jets and helicopters patrol the skies and terrorize the people with their shelling; and Israeli settlers drive along special roads, accompanied by military convoys, to settlements that seem to grow and grow. It is small wonder, therefore, that Palestinians see the military occupation as the denial of their dignity, as an obstacle in the way of Palestinian statehood and as the source of violence in the region.

12. The Israeli perception is very different. Israelis see terrorism as the cause of the crisis. Suicide bombers who enter Israeli shopping districts, suburbs and settlements, snipers who shoot at passing traffic, and gangs who stab pedestrians in the parks have instilled a sense of fear into all Israelis. There is no guarantee of safety on the streets or roads, in shopping malls, restaurants or nightclubs. Palestinian violence is not seen as a response to Israeli military occupation of the Palestinian Territory but as terror directed at the very existence of the State of Israel.

13. Since 11 September, international support for the belief that terrorism is the main problem to be confronted in the region has inevitably grown. That terrorism is a threat to the present world order cannot, and should not, be denied. That terrorism is a scourge that threatens Israelis and Palestinians alike cannot and should not be denied. Every effort should be made to end violence intended or calculated to create a state of terror in the minds of particular persons or the general public, whether it is perpetrated by instruments of the State, by organized non-State groups or by individuals.[1] At the same time, it is important not to ignore the main explanation for the acts of terrorism committed by Palestinians against Israelis - the military occupation. It is the occupation of the Palestinian Territory that gives rise to savage acts of violence, highlighted by suicide bombings. The occupation also has other, less obvious, consequences for the occupier. As Mr. Avraham Burg, the Israeli parliamentary speaker, stated in the Knesset on 28 January 2002:

> "An occupying people, even if it was led into being an occupier against its will, ends up being harmed by the occupation and its stains, which change and disfigure it. We should not forget that the jailer and his prisoner remain locked up for most of the day behind the same walls and without hope. To put it in other, more stark terms, respected members, the occupation corrupts."

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[1] In document E/CN.4/2002/129 the Government of Israel criticizes the Special Rapporteur for referring to "*emerging* norms of international law" prohibiting terrorism. Exception is apparently taken to the word "emerging". In response the Special Rapporteur wishes to point out that while the international community has succeeded in criminalizing by treaty species of terrorism such as hijacking, aerial sabotage, hostage-taking, offences against diplomats, seizure of aircraft and terrorist bombing, it has not yet agreed on a comprehensive definition of terrorism. Indeed this issue is currently before the Sixth (legal) Committee of the General Assembly, where the debate over the response to State terror continues to create definitional difficulties.

This reminder of the consequences of occupation for the occupier was echoed in a statement by 60 Israeli army reservists, half of them officers and all of them combat veterans, when they announced that they would refuse to continue serving in the Palestinian Territory:

> "We will no longer fight beyond the Green Line for the purpose of occupying, deporting, destroying, blockading, killing, starving and humiliating an entire people" (*International Herald Tribune*, 29 January 2002).

Support for this position is growing daily (*International Herald Tribune*, 20 February 2002).

14. It is against this background that it is necessary to reiterate that it is the military occupation of the Palestinian Territory that is responsible for most of the violations of humanitarian law and human rights described in this report. Similarly it is necessary to recall the applicability of the Fourth Geneva Convention as the governing law. On 5 December 2001, the High Contracting Parties to the Fourth Geneva Convention reaffirmed the applicability of this Convention to the Occupied Palestinian Territory, reiterated the need for full respect for the provision of the Convention and recalled the obligations under the Convention of the parties to the conflict and of the State of Israel as the Occupying Power.

15. The Israeli argument that it is no longer the Occupying Power in respect of the A areas of the Palestinian Territory, accounting for 98 per cent of the population, is not supported by the facts on the ground. The harsh realities of occupation - shelling, tanks and roadblocks - are evident in the A areas, as well as in other areas of the Palestinian Territory. The Palestinian Authority may have powers of administration and local government but ultimately Israel has effective control over the lives of Palestinians throughout the Territory. According to article 42 of the Hague Regulation of 1907, occupation extends only to the territory where the authority of the hostile army "has been established and can be exercised". It cannot seriously be suggested that this threshold has not in recent months been reached in the Palestinian Territory.

IV. VIOLENCE AND LOSS OF LIFE

16. Since the start of the second intifada, in September 2000, nearly 1,000 Palestinians have been killed and about 17,300 injured. More than 260 Israelis have been killed and about 2,400 injured. Most of those killed and injured have been civilians, many of them children.

17. The first few months of the second intifada were characterized by violent clashes between Palestinian protesters, whose weapons were stones and molotov cocktails, and the IDF. Most deaths and injuries were the result of gunfire from the IDF. In its report, the Human Rights Inquiry Commission found that the Israel Defense Forces had responded in a disproportionate manner to protesters and were guilty of excessive use of force (E/CN.4/2001/121, paras. 44-52). Since then, the situation has changed radically as the Palestinians have moved from protest to armed force and the Israelis have responded by using heavier weaponry. Today, most Palestinian deaths have resulted from missile attacks directed at selected individuals suspected of

terrorism (but which, inevitably, have also killed innocent bystanders), shelling and shootings carried out by soldiers and settlers, often after an exchange of gunfire. Israeli deaths have largely been caused by terrorist bombs in Israel itself and by gunfire directed at settlers on bypass roads or in the proximity of settlements.

18. It is difficult to categorize the present conflict. At times it assumes the character of a law enforcement action by the IDF. But at others it probably qualifies as an armed conflict as a result of the protracted armed violence between the IDF and Palestinian militia (in the language of the *Prosecutor v. Tadić*, International Criminal Tribunal for the Former Yugoslavia, reported in (1996) 35 *International Legal Materials*, at p. 54). In the case of such a conflict both parties are obliged to respect the rules of international humanitarian law. Hence the call by High Contracting Parties to the Fourth Geneva Convention on 5 December 2001 to both parties to the conflict to:

> "ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations".

19. Both Israelis and Palestinians have violated important norms of humanitarian law and international law as the confrontation has changed its character. Israel's freely acknowledged practice of selected assassination or targeted killings of Palestinian activists, which has resulted in the killing of some 60 persons, cannot be reconciled with provisions of the Fourth Geneva Convention, such as articles 27 and 32, which seek to protect the lives of protected persons not taking a direct part in hostilities. They also violate human rights norms that affirm the right to life and the prohibition on execution of civilians without trial and a fair judicial process. There is no basis for killing protected persons on the basis of suspicion that they have engaged or will engage in terroristic activities. In addition, many civilians not suspected of any unlawful activity have been killed in these targeted killings, in the bombing of towns and villages or in gunfire exchanges, in circumstances indicating an indiscriminate and disproportionate use of force.

20. The force employed by Palestinians is also contrary to the norms of international law. The shooting of settlers cannot be justified. Despite the fact that the settlements violate article 49 (6) of the Fourth Geneva Convention, and the fact that the settlers' presence in the Occupied Palestinian Territories is illegal, settlers remain civilians and cannot be treated as combatants, unless, of course, they are engaged as soldiers in the Israel Defense Forces or in vigilante-type military operations. (The growing militarization of settlements and settlers is to be deplored as it encourages the belief that force may be used against settlers.) Indiscriminate attacks against civilians, including bomb attacks carried out by suicide bombers, intended to create a state of terror among the civilian population, violate norms of humanitarian law and general international law. The extent to which these actions are subject to the control of the Palestinian Authority is uncertain. There is, however, no doubt that it could do more to prevent the shooting of settlers and the culture of violence that produces suicide bombers.

21. An unfortunate feature of the present situation is the failure of both parties to the conflict to investigate atrocities and to prosecute and punish those responsible. Israel regularly, and with justification, castigates the Palestinian Authority for its failure to arrest those responsible for the murder of Israelis or to detain those suspected of being responsible for acts of terrorism in Israel. This complaint, which features prominently in the Western media, is used as a justification for refusing to resume negotiations with the Palestinians. Yet Israel is itself at fault in this respect as it too, with its sophisticated police apparatus, has failed to apprehend settler vigilantes responsible for killing Palestinian civilians or to prosecute members of the armed forces guilty of the indiscriminate use of force. In the wake of the killing of a Palestinian family at Idna in July 2001, an Israeli columnist, Gideon Levy, wrote in *Ha'aretz* on the subject of the Israeli restraint in taking action against those responsible for atrocities against Palestinians:

> "In a time of increasing Palestinian terror, no day passes without pogroms by settlers, and the police, the Israel Defense Forces and the other security forces stand there, sometimes closing their eyes and sometimes winking ... The restraint over actions by the extreme right includes all governmental authorities: the police, the IDF, the Shin Bet, the courts and the authorities that grant pardons. It is a dangerous restraint, whose putrid fruits led to the most recent murder at Idna: the persons who carried it out believed that their chances of getting caught were infinitesimal ... The restraint ... undermines Israeli arguments regarding the PA's inability to fight terror: it is a little hard to complain about the 'revolving door', the lack of arrests and failure to prevent terror at a time that Israel, a sovereign State rich in security apparatuses, does the same thing when it comes to its own, home grown terror." (22 July 2001)

22. Violence is escalating rapidly in the region. Israel, with its arsenal of sophisticated weaponry, is taking tougher measures against Palestinians and Palestinian targets. F 16 fighter aircraft and Apache helicopters patrol the skies; heavier bombs pound Palestinian targets; bulldozers plough through more buildings; tanks parade through A area towns; and the military presence at roadblocks intensifies. The Palestinian response is equally tough: while suicide bombers have created terror in the Israeli heartland, militarized groups armed with rifles, mortars and Kassam-2 rockets confront the IDF with new determination, daring and success. In this situation, calls for a ceasefire or a cessation of violence as a precondition for the resumption of talks between Israelis and Palestinians are doomed to fail. Only an effective international presence in the region with the power to monitor and reduce the use of violence can achieve this goal. The Special Rapporteur is aware of Israel's objections to such a proposal: memories of the withdrawal of the United Nations Emergency Force (UNEF) from the Egyptian border facing Israel in 1967; the fear that a United Nations force will be able to curb Israeli conventional violence, but not Palestinian suicide bombers and snipers; and, above all, the argument that this will "internationalize" the conflict. United Nations peacekeeping operations have not met with success on all occasions. This no one can deny. On the other hand, they have served to reduce tensions in many conflicts and, ultimately, to restore peace. The present conflict is already international in the sense that it is one between a State and a nascent State, with many of the characteristics of statehood. The danger is that it will draw in other States in the region. If this is to be avoided and the level of violence brought under control, it seems that there is no alternative to an international peacekeeping mission, structured and composed to meet the special circumstances of the region.

V. SETTLEMENTS

23. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49 (6) of the Fourth Geneva Convention, which prohibits an Occupying Power from transferring parts of its own civilian population into the territory it occupies. In numerous resolutions the Security Council and the General Assembly have condemned the settlements as illegal and in their Declaration of 5 December 2002, the High Contracting Parties to the Fourth Geneva Convention reaffirmed this position.

24. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 390,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and Israel by a vast system of bypass roads (from which Palestinian vehicles are excluded), which have a 50- to 75-metre buffer zone on each side of the road in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian Territory.

25. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

26. That peace is impossible without a complete freeze on all settlement activity was emphasized by the "Mitchell report" of 20 May 2001 (report of the Sharm El Sheikh Fact-finding Committee). The response of the Government of Israel to that recommendation was far from satisfactory. It declared that "it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account". In other words, the "natural growth" of the settlements will continue.

27. The evidence of the continued expansion of settlement activity is all too clear. During his visits, the Special Rapporteur saw evidence of this in the form of construction activity in the settlements of Har Homa and Pisgat Ze'ev and in the extension of the buffer zones adjacent to bypass/settler roads in the Gaza Strip. He also received evidence of the growth in the number of housing units, the expansion of the territorial limits of settlements by means of caravan outposts established adjacent to settlements, and of an increase in the settler population in the West Bank and Gaza from 203,067 in December 2000 to 205,015 in June 2001. Generous tax breaks and cheap housing in the settlements ensure that their growth will continue.

VI. BUFFER ZONES

28. A new form of Israeli territorial expansion in the Occupied Palestinian Territory is the security buffer zone along the green line in the northern West Bank near to Jenin. This zone, ranging in width from a few metres to several kilometres, is closed to non-residents. It is likely that the IDF will make greater use of such zones in future. This was promised by Prime Minister Sharon in an address to the Israeli nation on 21 February 2002.

VII. DEMOLITION OF HOUSES AND DESTRUCTION OF PROPERTY

29. The demolition of houses in the Palestinian Territory, either for security purposes (as in Rafah) or for administrative reasons (as in Shu'afat) continues unabated. In the Gaza Strip alone, over 400 houses have been completely destroyed, while a further 200 have been seriously damaged, leaving over 5,000 persons homeless. On 10 January 2002, 60 houses were completely demolished in the refugee camp of Rafah, rendering 614 persons homeless. The Special Rapporteur visited the site of the demolished houses in Rafah in both August 2001 and February 2002. He also visited demolished houses in Shu'afat and saw the damage caused to homes by Israeli shelling in Beit Jala.

30. The demolition of houses generally takes place in the middle of the night, without warning being given to residents. The following account of a house demolition given by a resident of Rafah captures the horror of such an event:

> "On Thursday [10 January], I was woken at about 2 a.m. by the sound of tanks and bulldozers that had come from the direction of the Israeli army post. I got out of bed and saw that my sons had also woken up. The bulldozers were approaching the house and we decided to leave immediately. We woke up the others and got out. We managed to proceed a few metres when three bulldozers reached the house. Immediately, one of them started to demolish the house. I stood in the rain for a few moments, unable to believe that I wouldn't ever see my house again. The children were screaming and one of them asked me to run away because he was afraid I would get hurt. We fled to the adjacent street. I stood there with my wife, children, grandchildren and others in my family and watched for 10 minutes as the bulldozer destroyed our house." (*B'Tselem*, "Israel's policy of house demolitions and destruction of agricultural land in the Gaza Strip", February 2002).

It must be recalled that most persons affected by such demolitions are refugees from the 1948 war. For them it represents the elimination of yet another home. No compensation is paid by Israel.

31. The practice of house demolitions has serious legal consequences. First, it may, according to the Committee against Torture, in certain instances amount to cruel, inhuman or degrading treatment or punishment in breach of article 16 of the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, which Israel ratified in 1991 (Conclusions and recommendations of the Committee against Torture of November 2001 on the third periodic report of Israel). Secondly, it may, in terms of article 147 of the Fourth Geneva

Convention, constitute a grave breach of the Convention, involving penal consequences where it constitutes "an extensive destruction ... of property, not justified by military necessity and carried out unlawfully and wantonly". While there are doubtless instances in which houses have been demolished for genuine security reasons, the extent of the damage and the evidence of witnesses suggests that the destruction of houses in many instances is not "rendered absolutely necessary by military operations" (as required by article 53 of the Fourth Geneva Convention) and instead constitutes collective punishment (prohibited by article 33 of the Convention). Violation of these norms carries with it not only a criminal sanction but also a duty to compensate the victim.

32. The creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers. A total of 285,808 fruit and olive trees have been uprooted, and wells and agricultural constructions have been destroyed. Lasting harm has been done to the environment by these acts of destruction, designed to secure the comfort and security of illegal settlements.

VIII. RESTRICTIONS ON FREEDOM OF MOVEMENT

33. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. International borders with Egypt and Jordan have been frequently closed; the Gaza Strip has been sealed off from the rest of the Palestinian Territory; Gaza Airport has been closed and damaged; travel within Gaza is frequently obstructed by the closure of the road between north and south; and over a hundred checkpoints have been placed on roads in the West Bank. In the West Bank, the Israel Defense Forces have placed checkpoints at the entrances to villages and entry and exit are often possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. In August 2001, the Special Rapporteur visited the city of Jericho, which has been encircled by a deep trench to deny vehicles access to the city except through an IDF checkpoint.

34. Road checkpoints have become a regular feature of Palestinian life. Palestinians are obliged to wait for lengthy periods while Israeli soldiers check vehicles and inspect identity documents. In order to avoid these delays Palestinians often abandon their cars or leave their taxi and cross the checkpoint on foot to catch a taxi on the other side of the checkpoint. This practice suggests that the purpose of this exercise is not to prevent security risks from crossing checkpoints that lead to Israel, as any such person may walk around the checkpoint carrying heavy baggage. Rather, it is to humiliate Palestinians and to put pressure on them to cease resistance to Israeli occupation. In this sense, it is a collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

IX. ECONOMIC AND SOCIAL DISTRESS

35. The cumulative effect of the restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian Territory. The internal closures have

effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 115,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. Thirty-six per cent of the Palestinian workforce is now unemployed, compared with 20 per cent before the start of the intifada. Fifty per cent of Palestinians live below the poverty line of US$ 2 per day, more than double the poverty rate before the intifada. There has been a decrease in the per capita income of 47 per cent; and 45,000 households are classified as special hardship cases requiring emergency assistance registered with the Palestinian Authority's Ministry of Social Affairs. UNSCO estimates that the total income losses to the Palestinian economy during the period 1 October 2000 to 31 December 2001 range between US$ 3.1 and 4.0 billion, which translates into total income losses ranging between US$ 6.8 and 8.8 million per day.

36. Access to food and water has been severely obstructed by the closure. Food trucks face difficulties in entering Gaza in particular, while food prices have increased as a result of higher transport costs resulting from the closure. Water resources have been reduced owing to obstacles placed in the way of water trucks, the destruction of wells, rooftop water tanks and rain collection pools by shelling, the damaging of water sources by settlers and soldiers and the high consumption of water by settlers.

37. Health care and education have also suffered. Ambulances and private vehicles transporting the sick to hospitals in emergency situations are held up at checkpoints, sometimes with fatal consequences. Access to regular health care at hospitals and clinics has also been made difficult by checkpoints and the use of medical services has declined substantially. Special attention is paid below to the effect of the crisis on children and education.

38. The closure violates a number of provisions of the International Covenant on Economic, Social and Cultural Rights, notably article 11 (which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions") and article 12 (which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"). It is also impossible to reconcile the closure with articles 23, 55 and 56 of the Fourth Geneva Convention, which require the free passage of consignments of medical and hospital stores and the free passage of foodstuffs, clothing and medicines intended for certain vulnerable categories of persons and impose a duty to ensure food and medical supplies to the population and to ensure and maintain medical and hospital establishments and services, public health and hygiene in occupied territories.

X. REFUGEES

39. It is not within the mandate of the Special Rapporteur to pronounce on the implementation of the right of return of Palestinian refugees recognized in General Assembly resolution 194 (III) of 1948 or on the institutional arrangements for the protection of refugees. No report on the violation of humanitarian law and human rights in the Palestinian Territory

would, however, be complete without special mention of the impact of the present crisis on refugees. Comprising over 50 per cent of the Palestinian population, refugees are particularly vulnerable to Israel's military assaults and economic blockade, on account of the location of many refugee camps near to settlements, settlement roads and the Egyptian border, and the disadvantaged position of most refugees in the labour market. More than half of the Palestinians killed since September 2000 have been refugees. The number of houses demolished or severely damaged in refugee camps is at least twice the number outside refugee camps. According to the United Nations Relief and Works Organization for Palestine Refugees in the Middle East (UNRWA) 320 of the 401 houses demolished in the Gaza Strip were homes to refugees. Unemployment is higher among refugees than non-refugees as is the number of households below the poverty line. Palestinian refugees are particularly vulnerable to higher rates of poverty as a result of negative changes in the economy. This is due to a relative lack of accumulated savings and thus no safety net to protect them from a high dependency on wage labour, the lack of access to land-based forms of subsistence, i.e., agriculture or property, and the large number of dependants per family prevalent in camp populations, which limits the ability of refugee families to absorb drastic and lengthy decreases in income.

XI. CHILDREN

40. Children have suffered severely from the present crisis in terms of personal safety, family life, physical and mental health, education and justice. Although Israeli Military Order No. 132 defines a child as someone under the age of 16, the present report accepts the international standard of 18 (article 1 of the Convention on the Rights of the Child, 1989), which is also the position under Israeli law. By this standard, over half the population of Palestine are children.

41. Over 200 of the Palestinians killed since the start of the second intifada in September 2000 have been children, while over 7,000 children have been injured. Of those injured, 500 will experience long-term disabilities. In the early months of the present intifada many children were killed or wounded by the IDF for participating in demonstrations involving the throwing of stones and molotov cocktails. Live ammunition, rubber-coated steel bullets and tear gas were used to disperse demonstrators in a display of excessive and disproportionate use of force (see report of the Human Rights Inquiry Commission of 16 March 2001, E/CN.4/2001/121, paras. 44-52, 116). In the past year, most of the children killed or injured by the IDF were not engaged in confrontational demonstrations, but were victims of shelling by tanks and helicopter gunships, while they were engaged in normal peaceful pursuits. Particularly disturbing are the deaths of five young boys in Khan Yunis on 22 November 2001, caused by a suspicious explosive device, and of three youths crossing a field near Beit Lahia on 30 December 2001, caused by heavy artillery fire. Calls for a full investigation into these deaths have, as yet, not met with a positive response.

42. Inevitably the economic hardships inflicted on the Palestinian community by the "closure" of the Palestinian Territory has had a serious impact on the lives of children. The majority of children in the West Bank and Gaza now live below the poverty line and families are compelled to reduce food consumption. Domestic violence is on the increase and children are becoming increasingly aggressive themselves. Access to hospitals and clinics is obstructed by military checkpoints. And the constant shelling, gunfire and presence of a hostile occupying army has had serious psychological consequences on all, but particularly on children.

43. Education is a top priority in Palestine. There are about 865,500 children enrolled in primary and secondary schools, administered mainly by the Palestinian Authority and UNRWA. Since 1994, many new schools have opened and student numbers have increased substantially. The Palestinian Authority devotes 13 per cent of its budget to education, while more than half of the UNRWA budget goes to education. Education, at all levels, however, has suffered seriously since 29 September 2000, particularly in the 275 schools, with some 118,600 students, within a 500-metre radius of an Israeli military presence.

44. Some schools have been commandeered by the IDF for use as military outposts; others have been bombed; over a hundred have come under fire, both in the daytime when the schools are in session and at night. On 20 February 2001 the National School for the Blind in the West Bank town of Al-Bireh came under fire for three hours, causing extensive damage and traumatizing the disabled children. On some occasions, the IDF has fired tear gas into schools and ordered children to evacuate. Sometimes schools have been closed by the IDF for alleged security reasons or by the school authorities for the safety of the children. The Al-Khader secondary school in the Bethlehem district, which the Special Rapporteur visited, was closed for 45 days by military order, affecting some 2,500 students. This school has been seriously damaged by the IDF, which has on occasion entered the school premises during teaching hours, assaulted students and used tear gas to disperse students. Schools are also hampered by checkpoints, which prevent both students and teachers from reaching school on time, and by military curfews (particularly in Hebron).

45. The effect of the above actions on education has been severe. Schools have lost considerable teaching time as a result of interruption and closures; absenteeism is rife as schools no longer provide a secure environment; and academic performance has deteriorated. Children are afraid and unable to concentrate. It is impossible to assess the long-term psychological harm caused to children by these assaults on their schools, the killing and wounding of their friends and the growing poverty they experience at home. Many have simply lost their childhood.

46. University education has also been adversely affected by the crisis. The University of Bir Zeit, for instance, has lost several weeks of classes as a result of the closure of access roads to the university, while the military checkpoints leading to the university interfere with the normal life of the institution and provide a daily opportunity for harassment of staff and students by the military. The arrest of students has also had a serious impact on university life and cast a shadow on the free exchange of ideas.

47. The right to education is reaffirmed in the International Covenant on Economic, Social and Cultural Rights (art. 13) and the Convention on the Rights of the Child (arts. 28-29). Moreover, article 50 of the Fourth Geneva Convention provides that the

> "Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children."

It is impossible to reconcile Israel's actions against schools and children with these provisions.

XII. CHILDREN AND THE ADMINISTRATION OF JUSTICE

48. Israel is proud of its judicial system and administration of justice. As a nation, Israel is committed to the rule of law and to due process of law in criminal proceedings. There are, however, serious doubts as to whether this commitment extends to the Palestinian Territory, and particularly to the treatment of Palestinian children in the justice system. Consultations with the principal Palestinian, Israeli and international non-governmental organizations working in this field, the study of their carefully prepared reports, backed in some instances by affidavits from their victims, and interviews with several children who were detained, interrogated and imprisoned, reveals an alarming pattern of inhuman treatment of children under the military justice system in the Palestinian Territory. The Special Rapporteur would have preferred to discuss this matter with the Israeli authorities before reporting on it. Unfortunately, the Government of Israel has elected not to cooperate with the Special Rapporteur. In these circumstances, the Special Rapporteur has no alternative but to raise the issue as a prima facie case of inhuman treatment to which the Government of Israel should respond.

49. According to the evidence, about 1,000 children under the age of 18 have been arrested and detained since September 2000 in connection with crimes relating to the Palestinian uprising. Most - over 90 per cent – have been arrested on suspicion of throwing stones at Israeli soldiers, which carries a maximum penalty of 6 months' imprisonment for a child between 12 and 14, and 12 months' imprisonment for a child between 14 and 16. Children are tried in Israeli military courts. There are no military courts or judges designated especially for children, no officers trained specifically for the interrogation of children, no probation officers and no social workers to accompany them. At present about 150 children are in detention or prison.

50. The evidence indicates the following pattern of arrest, interrogation, detention, sentencing and imprisonment. Arrests occur late at night with the maximum disturbance to the family, and children are often assaulted in the process of arrest and on the way to detention centres. Interrogation in order to secure a confession continues for several days and is accompanied by beating, shaking, threats, sleep deprivation, isolation, blindfolding and handcuffing. Detainees are forced to sit or crouch in painful positions ("shabeh"), doused with cold water in winter, and shot at with toy pistols with plastic pellets from close range. Their heads are placed in the toilet and the toilet flushed. Detainees are not permitted to see their lawyers at this stage. Interrogation accompanied by treatment of this kind may continue for several days until a confession is obtained. The Israeli Supreme Court, in its 1999 decision outlawing physical methods of interrogation, accepted that inhuman methods of interrogation qualifying as torture might be employed in a case of "necessity" - where it is imperative to obtain information urgently about the "ticking bomb". This alleged exception to the prohibition on torture is clearly inapplicable where the aim of the interrogation is not to extract information about a ticking bomb but about stone-throwing by children.

51. Following interrogation, children are often detained for several months awaiting trial. When tried they are sentenced to several months in prison: usually between 7 and 12 months in the case of children over 14. In addition, they are usually fined about US$ 250. They are imprisoned in Israel itself, which makes visits by family and Palestinian lawyers extremely difficult as special permission must be obtained to enter Israel. (Visits arranged by the

International Committee of the Red Cross were suspended for several months but have recently been resumed.) These child "political prisoners" are imprisoned with common criminals and complain of assaults perpetrated by both prison guards and common-law prisoners.

52. Complaints about inhuman treatment to medical doctors (both in detention centres and in prison) and to the trial judges in the military courts are generally not investigated or taken seriously.

53. The inhuman treatment of juvenile offenders described above falls short of international standards contained in the Convention on the Rights of the Child (art. 37), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (arts. 1, 16), the Standard Minimum Rules on the Treatment of Prisoners of 1957 and the Fourth Geneva Convention (arts. 27, 31, 32, 76). These are serious allegations which require a serious response from the Israeli authorities. The Special Rapporteur recommends that the Israeli authorities conduct a thorough investigation into these allegations (detailed more fully in reports of non-governmental organizations) carried out by an independent body outside the military, police and prison services. At the same time, immediate steps should be taken to transfer those imprisoned in Israel to prison facilities in the occupied territory (as required by article 76 of the Fourth Geneva Convention) that comply with international standards relating to the imprisonment of children. It is also recommended that the military authorities appoint an Israeli judge or other independent Israeli criminal justice expert outside the military to visit detention centres to monitor interrogations and the treatment of juveniles in detention centres before they are brought to trial.

XIII. CONCLUSIONS AND RECOMMENDATIONS

54. The parties to the conflict are themselves either incapable of or unwilling to bring the violence in the Occupied Palestinian Territory and Israel to an end. In these circumstances, the need for an international presence, either in the form of monitors or peacekeepers, is surely imperative to reduce violence, restore respect for human rights and create conditions in which negotiations can be resumed. (See further, paragraph 22 above.)

55. International humanitarian law and human rights norms have been seriously violated in the present conflict by both parties. Both Israelis and Palestinians should make every endeavour to respect the rule of law, human rights and humanitarian law. Targeted killings of selected Palestinians by guided missiles, terrorist bombings in Israel, the demolition of homes in the Palestinian Territory and the indiscriminate killing of civilians by both sides must cease.

56. Israel's restrictions on freedom of movement, resulting from checkpoints, have caused great personal, social and economic hardships to civilians in no way involved in the conflict. They constitute collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention. Moreover, sufficient doubts have been cast on both the purpose and the effectiveness of checkpoints as a means of promoting security to warrant a serious reconsideration of their retention by the Government of Israel.

57. Settlements are an ever-visible and aggravating sign of occupation and of Israel's illegal conduct as an Occupying Power. It is not enough merely to impose a freeze on settlements. Steps must now start to dismantle settlements.

58. Children have suffered greatly in the present crisis. Every effort should be made by the Israeli military authorities to ensure that the safety and welfare of schools and schoolchildren are respected. It is further recommended that an investigation be conducted into allegations of inhuman treatment of children under the military justice system and that immediate steps be taken to remedy this situation. (See the recommendations contained in paragraph 53 on this subject.)